IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1319 OF 2003
IN
SUIT NO.1290 OF 2003

Central Chinmaya Mission ..Plaintiffs

Vs.

Swamini Premanandaji Saraswati
alias Maa Premanandaji ..Defendant

Mr.P.D.Anklesaria a/w Veena B.Thadani and Vishal B.Thadani for the plaintiffs

Mr.A.J.Shobhawat for the defendant

CORAM : S.U.KAMDAR, J
DATED : 13TH OCTOBER, 2005

P.C.:

1. Matter was on board on 6.9.05. On that day the learned counsel for the defendants pleaded personal ground that he is not having the brief in the matter and therefore he is not able to argue the case. At the same time he also stated that the matter is to be settled between the parties and asked for adjournment. Matter was accordingly adjourned to 6.10.05. Matter was on board on 6.10.05. On 6.10.05 the learned counsel did not

remain present but on his behalf one Advocate Mr.Vaidya remained present in court. The learned counsel for the plaintiffs informed the court that there has been no discussions and negotiations in respect of settlement of the said dispute and that the defendant never approached the plaintiffs for any settlement but took adjournment on false pretext. However, the said Advocate, Mr.Vaidya appearing for the defendant mentioned that Mr.Shobhawat, advocate who is appearing for the defendant has become ill and admitted into the hospital for malaria and seeks two weeks time. I have recorded in my order that there is a deliberate attempt on the part of the defendant not to prosecute the present Notice of Motion. Inspite of the aforesaid due to ground of sickness, I gave an opportunity to the defendant to make alternate arrangement to proceed with the matter and the matter was kept on board on 7.10.05. Matter was thereafter on 7.10.05. Defendant appeared in person and once again requested for time for one week on the ground of sickness of her advocate. I adjourned the matter once again for a week and the matter was kept today. Today, Mr.Shobhawat himself

is appearing in the matter. However, he contends that he has now briefed the counsel Mr.Sanglikar to argue the matter and he is available. When I pointed out that the adjournments were taken on his personal grounds, he states that he is not going to argue the matter. His Vakalatnama is still on record. In the aforesaid circumstances, I called upon the defendant to argue the matter but the defendants advocate Mr.Shobhawat who is on record is refusing to argue the present matter.

2. I have heard the learned counsel for the plaintiffs. In the present Notice of Motion, the claim is in respect of a suit flat being flat no.101 situated at Garden Crest Co-op.Housing Society Ltd., 1st Floor, West Avenue Road, Santacruz (West), Mumbai 400 054. The flat premises comprises of one room and one hall, kitchen and two toilets and admeasures approx.987 (built up) area. The said flat has been purchased by the plaintiffs on ownership basis. Plaintiffs are thus the owners in respect of the said flat. Plaintiff is a trustee running a charity organisation. Defendant herein is a Swamini who is

enrolled as Swamini in the plaintiffs trust and supposed to be undertaking charitable activities for and on behalf of the plaintiffs trust. It is the case of the plaintiffs that during the functioning of defendant as a Swamini and for effective discharge of duties defendant was permitted to occupy a portion of the flat no.101 situated at Garden Crest CHS Ltd., West Avenue Road, Santacruz (West), Mumbai - 54 hereinafter referred to as the suit flat. Defendant has been residing therein for quite sometime and conducting the activities of the plaintiffs herein.

3. There has been difference and dispute between the plaintiffs and the defendant pertaining to some of the activities of the defendants in the course of discharging her function as Swamini of the plaintiffs trust. In that view of the matter the plaintiffs expelled the defendant from being associated with the plaintiff trust and from her position as Swamini of the plaintiff trust. Defendant was entrusted the work of Gujarat Earthquake Relief Work for an on behalf of plaintiff trust. It is the case of the plaintiffs

that in the course of the said relief work there has been misappropriation of fund. Plaintiff was thereafter asked to vacate the said flat and also requested her to attend the office of the plaintiffs to inspect the accounts. However, defendant has refused to vacate the said premises and therefore the present suit has been filed for the recovery of possession of the said property. In the aforesaid suit, the Notice of Motion has been taken out for various reliefs. Notice of Motion No.1319 of 2003 interalia seeks relief that the defendant should be ordered and directed by a mandatory order and injunction to remove herself and her mother and her personal belongings from the suit premises. By prayer (b) claim is made for mense profit of of Rs.1000/-. By prayer (c) injunction is sought restraining the defendant from interfering with plaintiff possession of the suit premises and various other interim orders are sought in Notice of Motion No.3726 of 2003. It is interalia prayed that Court Receiver, High Court, Mumbai should be appointed in respect of the suit flat in occupation of the defendant with power to remove the defendant and her mother or whomsoever

found in portion of the suit flat and once again prayer for Rs.1000/- being the claim for mense profit has been made. It is the case of the defendant that the defendant is in possession of the entire flat whereas it is the case of the plaintiffs that defendant is in possession of only a portion of suit flat. Without going into the controversy of the fact that whole area of the flat is in possession of the defendant or a portion thereof, I am of the opinion that on merits the defenant is not entitled to continue in possession of the suit flat. There is no dispute that the plaintiffs are the owner in respect of the suit property. The so-called tenancy claim in affidavit in reply filed by defendant is bogus and without any merits. Tenancy is purported to be claimed on the basis of rent paid by rendering services to the plaintiffs. I am of the opinion that the so called claim of tenancy is bogus and I therefore accordingly reject the same. In the aforesaid circumstances, there are no other defences raised. The plaintiffs if the owner of the property and thus entitled to enjoy possession of the said flat. At the highest in my opinion, the status of the

defendant is of a gratutious licence. I am of the opinion that in the interest of justice, following order should be passed.

4. Court Receiver, High Court, Mumbai is appointed with direction to take physical possession of the suit premises. Court Receiver is directed to seal the said premises and make report to the court for further direction as to who should be put in possession of the said premises and on what terms and conditions. Receiver to take physical possession from the defendant of the area which is found to be in her occupation. Receiver to seal the area after taking possession thereof from the defendant. Both the motions are disposed of accordingly. No order as to costs. The learned counsel for the defendant seeks stay of the present order.In view of the fact that he has refused to argue the present matter, question of granting of stay does not arise. Stay rejected.